IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9251 of 1997
with
Special Civil ApplicationNo.2276 of 1998
with
Misc. Civil Application No.1219 of 1998
with
Civil Application No.4556 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

KESHAVBHAI KHIMJIBHAI DHANANI

Versus

STATE OF GUJARAT

Appearance:
I. Special Civil Application No.9251 of 1997
Mr.H.M. Mehta, Senior Counsel, with Mr. P.M. Bhatt
for the petitioner
Mr. S.N. Shelat, Addl. Advocate General, with Mr.D.P. Joshi, AGP, for respondents Nos. 1 to 3
Mr. V.B. Patel, Senior Advocate, with Mr. V.H.Patel for respondent No.4
Respondents Nos. 1 to 3 served.

II. Special Civil Application No.2276 of 1998
Mr.N.D. Nanavati, Senior Advocate,
of Nanavati Advocates for the petitioner
Mr. S.N. Shelat, Addl. Advocate General, with Mr.D.P.

Joshi, AGP, for respondents Nos. 1 to 3
Mr.R.S. Sanjanwala for respondents Nos. 4 and 5
Mr. V.B. Patel, Senior Advocate, with Mr. V.H.Patel
for respondent No.4
Respondent No.6 served.

III. Misc. Civil Application No.1219/98
Mr.H.M. Mehta, Senior Counsel,
with Mr. P.M. Bhatt for the petitioner
Mr. S.N. Shelat, Addl. Advocate General, with Mr.
D.P. Joshi, AGP, for respondents Nos. 1 to 3
Mr. B.M. Mangukia for respondent No.4.

IV. Civil Application No.4556 of 1998
Mr.N.D. Nanavati, Senior Advocate, of
Nanavati Advocates for the petitioner

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE M.H.KADRI
Date of decision: 11/11/98

C.A.V. Common Judgment: (Per: Kadri, J.)

SPECIAL CIVIL APPLICATION NO.9251 OF 1997

1. Rule. Service of Rule is waived by the learned advocates appearing for the respective respondents. At the request of learned advocates appearing for the parties, this application is taken up for hearing today.

2. Petitioners Nos. 1 and 2, petitioners Nos. 3/1 and 3/2, heirs of deceased Devsinh Keshavbhai, and petitioners Nos. 4/1 and 4/4 who are the heirs of deceased Valjibhai Lavjibhai, claimed to be tenants of Survey No.526, admeasuring 34 acres 1 gunthas, by filing this writ petition under Articles 14, 16, 19 and 226 of the Constitution of India, have prayed to issue an appropriate writ against the respondents to quash and set aside the order dated 1.1.1998 (Annexure "G") and resolution dated 31.12.1997 of the revenue department, allotting 25 acres of land of survey No.526 in favour of the respondent No.4-Shri Amreli District Leuva Patel Charitable Trust, Surat (hereinafter referred to as 'the respondent-Trust'). According to the petitioners, lands of survey No.526 was donated by the erstwhile Baroda State to Nagnath Mahadev Temple, which was under the management of the Government. The petitioners claimed to be deemed purchasers of the said agricultural land under the provisions of the Bombay Tenancy & Agricultural Lands Act, 1948. A part of the said land was acquired under

the provisions of the Land Acquisition Act, 1894 ('Act' for short) in the year 1961 by the Agricultural Department for establishing Seeds Development Center. As per the say of the petitioners, the activities of Seeds Development Center were discontinued and stopped and, hence, the petitioners applied for taking back the acquired lands and did apply on 8.10.1994 to the Director, Agricultural Department. The Director, Agricultural Department, gave a positive reply that, for the present, there was no movement for closing down Seeds Development Center. According to the petitioners, they were in dire need of the land in question and, therefore, they, again, filed application before the Secretary, Agricultural Department, Sachivalaya, Gandhinagar, on 12.2.1996, which was never replied to. It is the contention of the petitioners that the purpose of acquisition for which the lands in question were acquired had ceased to exist as Seeds Development Center had stopped working since 1.4.1996.

3. The petitioners came to know that respondent No.4-Trust registered a few months back having registration No.F-1728-Surat, is likely to be allotted the land in question. The petitioners contended that the said Trust is having strong political influence and was likely to pressurize the government authorities to allot the said land to the Trust. Apprehending the said allotment in favour of respondent No.4, the petitioners filed Civil Suit in the Court at Amreli, which came to be withdrawn as they wanted to challenge the action of the government by filing a writ petition under Articles 14, 16 and 226 of the Constitution of India.

4. The petitioners contended that the deemed purchaser at the time of acquisition of land was only given adhoc compensation of Rs.2400 and no award was passed under the Act. They had applied to the Collector, Amreli, in the year 1985, for a copy of the award, but no reply was given by the Collector, Amreli. It is contended that as per paragraph 328 of the Land Acquisition Manual, the petitioners have right to claim restitution of the acquired land as the purpose for which the lands were acquired had failed and the government had released the lands from acquisition. It is stated that the petitioners were and are ready to purchase the lands at the amount equal to the amount paid towards compensation or the market price of the land. The petitioners contended that in view of the express provision contained in paragraph 328 of the Manual, the impugned orders of the Collector dated 1.1.1998 and the Government Resolution dated 31.12.1997 cannot be

sustained in law and must be quashed and set aside.

5. The petitioners contended that they had put forth their claim as far back as on 8.10.1994 and much earlier in time than the claim lodged by respondent No.4-Trust, which was only made on 23.7.1997 and, therefore, the State Government should have allotted the land in question to the petitioners. It is alleged that respondent No.4-Trust had pressurized the former Chief Minister and the Chief Minister who was in the office in December 1997 and early part of January 1998, to allot the said land to the Trust, so as to win over the votes of leuva patel community on the eve of the general election, which was held in the month of March 1998. While allotting the land in question to respondent No.4, the State Government had flouted the provisions of the Bombay Tenancy and Agricultural Lands Act and the Land Acquisition Act and the rules framed thereunder. The petitioners by filing this petition have also prayed to issue a writ of mandamus to respondents Nos. 1, 2 and 3 with a direction to set aside the allotment order in favour of respondent No.4 and to direct respondents Nos. 1, 2 and 3 to allot the land in question in favour of the petitioners.

6. On behalf of respondent No.4, affiavits-in-reply are filed, inter alia, denying all the allegations made in the petition. It is averred that the petitioners or their ancestors were not holding the land in question as deemed purchaser and that the competent authority, i.e., Mamlatdar and Agricultural Land Tribunal, vide its order dated 30.1.1960, had held that the said land was not required to be construed under the provisions of Section 32G of the Tenancy Act. The record produced by the petitioners does not prima facie establish that they were tenants of the lands in question and, therefore, they cannot reclaim the lands in dispute. It is averred that the petition is liable to be dismissed on the ground of delay as the petitioners are claiming their right after long lapse of 37 years. It is averred that, after declaration of the award, the land in question absolutely vests in the government free from all encumbrance and it absolutely stood transferred in the name of the government.

7. Respondent No.4-Trust avers that the petition deserves to be dismissed in limine as the petitioners are guilty of suppressio-veri and suppressio-falsi. It is averred that the petitioners on 19.12.1995 filed Regular Civil Suit No.305 of 1995 in the Civil Court, at Amreli. In the said suit, notice was issued making it returnable

on 22.12.1997 and no stay was granted and on 22.12.1997 the petitioners filed purshis in the court declaring that on account of several technical difficulties, the petitioners did not want to proceed further with the suit and, therefore, the suit may be permitted to be withdrawn with permission to file fresh suit. It is averred that the learned Judge permitted the petitioners to withdraw the suit unconditionally, but did not grant permission to file fresh suit. It is averred that the respondent No.4-Trust is registered under the Bombay Public Trust Act as well as under the Societies Registration Act, having its registration No.F-729-Surat and Gujarat-829. The Trust has acquired funds of Rs.2 crores and has set apart Rs.10 cores and it proposes to establish educational institutions starting from K.G. to College with hostel facilities. The Trust also proposes to establish a hospital with all the modern facilities, as the adequate medical facilities in the surrounding area of Amreli District are not available. It is averred that, as per inclusive definition given in sub-section (f) of Section 3 of the Act, the land can be acquired for carrying out the educational activities by the society registered under the Societies Registration Act and, therefore, grant of the land in question in favour of respondent No.4 is for public purpose. It is averred that the provisions contained in paragraph 328 of the Manual issued under the Act are only administrative instructions and they cannot over-reach the statutory provisions, and they have no force of law. Even otherwise, the petitioners cannot reclaim the land in question as a matter of right, as they were not tenants of the acquired land. It is averred that the State Government, after ascertaining the market price of the land, had allotted it to the Trust for a public purpose. It is averred that the Trust proposes to start the educational institutions from June 1999. It is submitted that the Trust proposes to acquire land admeasuring 1,20,000 sq.mtrs to house all the complexes and, therefore, the Trust will have to acquire the lands either of adjoining survey numbers or to make request to the government for grant of land of adjoining survey numbers or of some other survey numbers. It is submitted that the Trust had paid market price of the land which comes to a huge amount of Rs.63 lakhs to the government and the Trust had not caused any loss to the public exchequer.

Special Civil Application No.2276 of 1998

8. Rule. Service of Rule is waived by the learned advocates appearing for the respective respondents. At

the request of learned advocates appearing for the parties, this application is taken up for hearing today.

9. The petitioner, who is a local resident of village Adhla, Taluka Lathi, an elected member of the Lathi Taluka Panchayat, has filed this petition under Articles 14, and 226 of the Constitution of India by way of public interest litigation, challenging the action of government of handing over the government land at a meagre price in favour of respondent No.7-Trust under the pretext of development of educational complex. It is alleged that the respondents Nos. 1 to 6 misused their offices against the interest of general public at large, which has resulted in incurring huge loss to the public and the State Exchequer. It is submitted that the decision taken by respondent No.s 1 to 6 in favour of respondent No.7-Trust is nothing but colourable exercise and misuse of power on the eve of the general election only with a view to achieve political gains in Amreli District. It is contended that the order dated January 1, 1998, as well as order dated December 31, 1997, passed by respondent No.3 and respondent No.1 was at the dictates of respondents Nos.4 and 5 for political reasons. It is contended that the land of Survey No.526 admeasuring 25 acres was allotted within a jet speed of 24 hours by the impugned orders. The possession of the land in question was handed over a week before the orders were passed in favour of respondent No.7-Trust.

10. In this public interest litigation, the petitioner has stated that the lands in question were in actual possession of the tenants and the proceedings under the Bombay Tenancy Act were also initiated by the said tenants as sitting occupant and to the knowledge of the petitioner the Tribunal had recognized the position of the said tenant as sitting occupant in the proceedings under the Bombay Tenancy Act. It is alleged that, after acquisition of lands of Survey No.526 in the year 1961, no development of the said Seeds Development Center had taken place on the acquired land till today.

11. It is contended by the petitioner that out of total land of 25 acres, less than two acres of land have been utilised by the State Government, wherein, as on date, formal training centre and the office of the Assistant Director is housed. Except these two rooms, remaining part of the said 25 acres of the lands is not used for any public purpose.

12. It is alleged that the past and present political

dignitaries of Amreli District solely belong to Patel Leuva Community and based upon this castism, under the pretext of public purpose, personal benefits are given to the said Patel Community. It is alleged that the large number of Leuva Patels have migrated to Surat and have flourished in the business of diamonds and because of huge business of diamonds at Surat, they have also developed a political clout because of which they have achieved capacity to compel the officers of the State Government as well as the District level officers to succumb to their illegal demands ignoring the provisions of the Statute and without taking into consideration whether the demands adversely affect the Government Exchequer. It is alleged that large chunk of government land has been almost sold in favour of respondent No.7 at the rate of Rs.74/- per sq.mtr, only within the period of 24 hours, whereas the Government Town Planner had assessed the current market price of the land in question at Rs.192/- per sq.mtr. It is contended that the provisions of the Land Acquisition Manual clearly provide that if the government fails to use the land for any public purpose, the said land should be reallotted back to the original owner. It is further contended that, by allotting land to respondent No.7, the real owners and occupants have been deprived of their claim which they had lodged much prior to the claim lodged by respondent No.7. The petitioner has, therefore, prayed that the Chief Secretary to the Government of Gujarat be directed to hold enquiry into the subject matter of this petition with regard to allotment of lands in question and to take appropriate steps against those found guilty of misuse of power and authority.

13. Respondents Nos.4 and 5, former Chief Ministers, filed affidavit in reply and denied the allegations made in the petition. It is denied that there is misuse of power of Chief Minister as a result of which the land came to be allotted to respondent No.7. It is stated that the averments made against them are vague and baseless. It is denied that by allotting land to respondent No.7 any loss to the public exchequer is caused at the hands of respondents Nos. 4 and 5. It is stated that no enquiry can be directed to be made against respondents Nos. 4 and 5 in absence of any specific allegations and, therefore, the petition deserves to be dismissed against them.

14. On behalf of respondents Nos. 1 to 3, affidavit in reply has been filed by Mr. V.N.Chauhan, Under Secretary to the Government, Revenue Department, denying the averments made in the petition. It is averred that

the Government has power and jurisdiction to allot the said land to respondent no.7-Trust. It is averred that 25 acres of land of Survey N.526 was acquired in the year 1961 for Seed Growth Center of Agricultural Department under the provisions of the Land Acquisition Act, 1894. It is averred that the Nagnath Mahadev Mandir Trust came into existence under the Bombay Public Trusts Act, after acquisition of the land in question. The market price was arrived at by the State Government as per the rules of the revenue department. It is further averred that the panchas doing the panch rojkam had opined that the cost of this land is Rs.74/- and accordingly the State Government has fixed the cost of this land at Rs.74/- per sq.mtr as per the Rules. It is submitted that the State Government had decided to give 15000 sq.mtrs of land at the price of Rs.37/- per sq.mtr and the rest of the land at the rate of Rs.74/- per sq.mtr. It is submitted that while fixing the market price of the land in question, sale instances of last five years were considered and the Cabinet of the State Government had also approved the market price and had fixed the rate looking to the object of the Trust. It is stated that, looking to the educational activities of the Trust, the price determined by the Town Planning Officer was not accepted. It is stated that the Cabinet Meeting was held on 24.12.1997 and in the said meeting at subject 98, it was decided to allot the land in question to the respondent No.7 for educational purpose. It is submitted that the land in question was acquired by the State Government and the same was vested in the Government and the Government can allot the land for any public purpose and it is not mandatory to the Government to reallot the acquired land to the original land owners. It is further stated that the State Government is competent to dispose of the land looking to the object of the Trust.

15. Affidavit in reply is filed on behalf of respondent no.7-Trust denying the allegations made in the petition. It is stated that the lands are allotted with specific condition that the lands should not be used for any other purpose except for the purpose for which the lands are allotted. After the orders of allotment were passed by the Government, the Trust has paid the consideration and possession of the land was handed over on 1.1.1998. Subsequently, necessary mutation entries were made in the village form 7/12 in the record of rights in village form No.6 and sanad has been issued in token of transfer of land. In the revenue record, the name of Shri Nagnath Mahadev Devasthan Samstha has been deleted and such changes have been reported to the Charity Commissioner long back. It is submitted that the

Trust has collected about Rupes 1 crore and 97 lacs and the Trust's assured fund is about 8 crores or more. The Trust will not only sub-serve the public purpose of establishing educational institutions but also contemplates to establish a Hospital at Amreli with all modern facilities including the facility of C.T. Scan which is not available in Amreli town or in the near about area. It is submitted that the State is under obligation to provide facilities and opportunities to the people to avail of the right of education. It is recgnized that the educational institutions should be encouraged to augment the much needed resources in the field of education thereby making as much progress as possible in achieving the Constitutional goal in this respect. It is further submitted that the present petition is not filed bona fide to subserve any public purpose or to prevent public injury. It is submitted that the petitioner is guilty of abuse of process of the Court to obtain personal benefit for private individuals, who are petitioners in the companion matters. It is further submitted that the land is allotted to the Trust pursuant to the executive discretion in exercise of sovereign governmental functions. It is submitted that the writ petition is filed as an after thought to support the petitioners of Special Civil Application No.9251 of 1997 after long lapse of time.

16. In both the Special Civil Applications, allotment of the lands of Survey No. 526 of Amreli Town in favour of the respondent-Trust is challenged and as substantially identical common questions of facts and law are involved, the same are disposed of by this common judgment.

Special Civil Application No. 9251 of 1997.

17. The learned Senior Counsel, Mr. H.M. Metha, for the petitioners, submitted that the petitioners, who were original tenants cum land-owners of the acquired land of Survey No.526, were entitled for restitution of the acquired land, after the acquisition had ceased to exist. It is submitted that as per Rule 328 of the Rules, which refers to disposal of land, when the land acquired is found not useful, the same can be allotted to the original owners. It is the submission of the learned Senior Counsel for the petitioners that the lands were originally acquired in the year 1961 for Seeds Development Center, and when the said purpose had failed and when the acquiring body had released the said land, the petitioners were entitled to have reallotted the land to them. The learned Senior Counsel for the petitioners

submitted that the petitioners had lodged their claim before the concerned authorities on 12.12.1996 to return the acquired land as they had first title on the land and they were ready to purchase the said land as per the Rules framed by the Government.

18. On the other hand, it is submitted by the learned Senior Advocate, Mr. V.B. Patel, on behalf of respondent No.4-Trust, that Rule 328 will have no application to the facts of the case and when the petitioners were awarded compensation for the acquired land they had no title over the land in question and further more as per conditions of Rule 328, the petitioners do not fulfil the requirement of claiming of return of the land as they were not landless persons because part of lands of Survey No.526 had remained with them. It is further submitted in this connection that the petitioners do not fulfil the criterion of having annual income of less than Rs.1800/- and, therefore, the petitioners, as per the provisions of Rule 328, cannot claim return of the land.

19. In this connection, the learned Additional Advocate General, Mr.S.N. Shelat, submitted that Rule 328 is not having any statutory force and it was not mandatory for the Government to follow the procedure prescribed under the said Rule. Mr. Shelat further submitted that Rule 328 is in the nature of administrative instruction and, therefore, it cannot have any statutory force. It is submitted that the petitioners were not entitled to claim return of land of acquired land as the said lands were sold to the respondent No.4-Trust for a public purpose as it wanted to develope the land for educational activities.

20. To appreciate the arguments of both the sides, it would be relevant to refer to the provisions of Rule 328 of the Manual of Land Acquisition For State of Gujarat, which is in vernacular language, translation of which is supplied by the learned Counsel for respondent-Trust, which reads as under:

"328. Disposal of Land:-

When the Railway or other applicant no longer requires but relinquishes the land, or when Government relinquishes land acquired for its own purposes, the following rules apply:-

(1) Where it has been decided to dispose of any

acquired land which for any reason has not been used, and has become available for disposal by the State Government, it need not necessarily be restored to the person or persons from whom it was originally acquired or such of them as may have been chiefly interested therein, or to their representatives in interest, unless the person concerned is a landless person or is in receipt of income not exceeding Rs.1,800/- per annum from the other sources in which case, it may be granted to such landless person or persons with low income, for an occupancy price equal to the amount of compensation paid for acquiring the land or the present market value of the land, whichever is more. Such lands, if they are not granted to original occupants, should be disposed of in accordance with standing orders of Government regarding disposal of Government waste lands but on payment of price not less than the amount awarded as compensation or the present market value, whichever is greater.

These orders do not apply to Non-agricultural lands or lands having non-agricultural potentiality and they should be continued to be disposed of as hithertofore. The price to be charged for these lands should be equal to the amount awarded as compensation or the present market value of the land, whichever is higher.

(2) xx xx xx "

21. It must be stated that the lands in question were acquired in the year 1961 for public purpose, namely, Seeds Development Center. After following necessary procedure as prescribed under the Land Acquisition Act, 1894 ('Act' for short), the relevant entries came to be made in the revenue record and the lands in question stood transferred in the name of the Seeds Development Center. The Government decided to release the lands in question as the project for seeds development had failed. The lands in question are admittedly agricultural lands having potentiality of non-agricultural land, therefore, Rule 328, will have no application to the lands in question. Moreover, the petitioners had not claimed return of land as they were landless labourers and having annual income of less than Rs.1800/-. Therefore, in view of these facts, the petitioners cannot claim return of land by invoking the provisions of Rule 328. Rule 328, in our opinion, is in the nature of administrative instruction and can have no statutory force and it is not

mandatory for the Government to follow the procedure prescribed under the said Rules. In the case of J.R. Raghupathy vs. State of A.P., reported in AIR 1988 Supreme Court 1681, the Apex Court has ruled that notification issued under Section 3(5) of the A.P. Districts (Formation) Act was in nature of administrative instructions and the guidelines contained in the said notification were merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for formation of a Revenue Mandal or for location of its headquarters keeping in view the broad guidelines. The Apex Court has held that the guidelines had no statutory force and they had also not been published in the Official Gazettee. The guidelines were mere departmental instructions meant for the Collectors. In our opinion, Rule 328 is also in nature of guidelines issued to the acquiring body and to the Government for following the procedure prescribed under the Act. These guidelines are in the nature of Rules for administrative convenience keeping in view the purpose and object of the Act.

22. Further, the petitioners cannot invoke Rule 328 for claiming return of the land in their favour, as the lands in question were, in fact, used for nearly 35 years for the public purpose, namely, development of seeds project. The opening part of Rule 328 provides that the Government must have decided to dispose of the acquired land, which, for any reason, 'has not been used', and has become available for disposal by the State Government. In the present case, the lands were actually used for 35 years for the public purpose of Seeds Development Center and, therefore, it cannot be said that the lands in question 'have not been used' for a particular purpose. In the present case, after 35 years, the purpose for which the lands were acquired had ceased to exist. When the Government had allotted lands in question to the respondent No.4-Trust for a public purpose, it cannot be said that action of the Government is illegal and the petitioners can claim the lands for their own use, which does not fall within 'public purpose'. It is for the Government to decide whether to allot the land to an individual or to an institution, who needs the land for public purpose. Admittedly, the respondent No.4-Trut had applied for the allotment of lands in question for public purpose of establishing educational institutions, i.e. for medical, engineering, pharmacy, and other higher studies and also for establishing schools, Kinder Garden, and hospitals which will be open to all sections of people irrespective caste, creed, religion, etc. In

fact, the respondent No.4-Trust has decided to discharge the function which is to be performed by the State Government of providing educational facilities to all sections of the society. In fact, the allotment of land in favour of the respondent No.4-Trut is for public purpose with a view to supplement the educational activities which are the primary functions of the State Government. When the State Government has allotted the land in question to the respondent No.4-Trust for educational activities, which is a public purpose, the petitioners cannot claim return of the said lands by invoking Rule 328. Therefore, in our opinion, the submission of the learned Senior Counsel for the petitioners that the petitioners were entitled to claim return of land under Rule 328 is devoid of any merit and deserves to be rejected.

23. It is next submitted by the learned Senior Counsel for the petitioners that the lands in question were originally acquired for public purpose and when that public purpose had ceased to exit, the petitioners, who were the original owners, who had lodged their claim prior to the respondent No.4-Trust, should have been allotted the land. In the alternative, it is submitted by the learned Senior Counsel for the petitioners that the procedure adopted by the Government in not considering the application of the petitioners and the allotment of lands in favour of the respondent No.4-Trust, is illegal and mala fide. The learned Senior Counsel for the petitioners, in support of his contentions, has placed reliance on the decision of the Apex Court in the case of Bhimappa vs. State of Mysore and others, reported in 1987 (Supp) Supreme Court Cases 28.

24. It is submitted by the learned Senior Advocate for the respondent No.4-Trust that the petitioners has not challenged the power of allotment of lands in question in favour of the respondent No.4-Trust by the Government. It is submitted that the petitioners were only claiming the allotment of land in their favour as they were the original owners of the acquired land. It is submitted that, after the acquisition, the lands in question stood transferred in the name of the acquiring body and the petitioners' title had come to an end. The learned Senior Advocate has submitted that the lands were acquired before 35 years and the present petition cannot be entertained after three decades on the ground that either the original purpose was not public or the land cannot be used for any other purpose. The learned Senior Advocate for the respondent No.4-Trust has submitted that

as per the provisions of Section 17A of the Gujarat Amendment to the Central Act, the purpose can be changed by the Government and, therefore, the allotment of land in favour of the respondent No.4-Trust cannot be said to be illegal or mala fide.

25. The submission of the learned Senior Counsel for the petitioners that, after the original public purpose for which the lands were acquired had ceased to exist, and after the said public purpose ceased to exist, the petitioners entitled to reallotment of lands in question, is devoid of any merit and deserves to be rejected. In the case of C. Padma and others vs. Dyt. Secretary to the Government of Tamil Nadu and others, reported in (1997) 2 Supreme Court Cases 627, the Apex Court has ruled that after the claimants were paid compensation and the lands vested in the State, the claimants are not entitled to restitution of possession on the ground that either original public purpose had ceased to be in operation or the land could not be used for any other purpose. In our opinion, the principles laid down by the Apex Court in the case of C. Padma (supra) will apply in all fours to the facts of the present case. Further, in the case of Shri C.R. Patil & Another vs. The State of Maharashtra & others, reported in JT 1996 (9) S.C. 258, the facts were that certain lands were acquired for the scheme under Section 126(4) of the Maharashtra Regional Town Planning Act and the award came to be passed by the Land Acquisition Officer under Section 11 of the Act and possession was taken after declaration of the award on October 21, 1974. After utilisation of the land, surplus land was sought to be used for allotment to some of the Councilors and the employees of the Kolhapur Municipality. The original owners challenged the grant of surplus land to Councilors and the employees of the Kolhapur Municipality and claimed restitution of the land which was acquired and which was not utilised for the public purpose for which it was acquired. In the background of the above facts, the Apex Court ruled as under:

"It is axiomatic that the land acquired for a public purpose would be utilised for any another public purpose, though use of it was intended for the original public purpose. It is not intended that any land which remain unutilised, should be restituted to the erstwhile owner to whom adequate compensation was paid according to the market value as on the date of the notification."

In the present case, admittedly, the project did carry out the activities on the acquired land for 35 years and,

thereafter, the Government decided to close down the said project. After the said project was closed down and the lands vested in the Government, the Government, on the application of the respondent No.4-Trust, allotted the lands in question to the respondent No.4-Trust by following the procedure. As the lands in question were needed by the respondent No.4-Trust for public purpose, the Government had fixed the market price of the land in question at Rs.74/- per sq.mtr. The report of the Town Planning Officer with regard to fixation of market price of the acquired land was not followed by the Government in fixing the market price of the land, because, the lands were to be allotted to the respondent No.4-Trust for public purpose and, looking to the nature of the public purpose, for which the lands were to be allotted to the respondent No.4-Trust, the Government had, after following the procedure, fixed the market price at Rs.74/- per sq.mtr and had allotted certain portion of land at 50% of the said market price. Admittedly, the petitioners, who claimed to be original owners, did not claim the land for public purpose. The Government, by exercising its discretion, had allotted the lands in question to the respondent No.4-Trust for public purpose. In this view of the matter, there was no discrimination in the matter of allotment of lands in question to the respondent No.4-Trust in preference to the petitioners. The decision on which the reliance is placed by the learned Senior Counsel for the petitioners in the case of Bhimappa (supra) will have no bearing on the facts of the present case. In the case of Bhimappa (supra), the Apex Court has regranted the land to the original owners as they had satisfied all the conditions for the regrant as per the Government Order No.RD 105, ACP 69 dated January 23, 1970. As observed earlier, in the present case, Rule 328 will have no bearing. As the lands in question were not non-agricultural land, the petitioners were not qualified to claim reallotment of land and did not fulfil the conditions of the landless labourers of not having the income of less than Rs.1800/per annum. Furthermore, the lands were put to use for nearly 35 years for the public purpose of Seeds Development Center. Therefore,, in view of the peculiar facts of the present case, the decision in the case of Bhimappa (supra) will not be any help to the petitioners.

26. The submission of the learned Senior Counsel for the petitioners that the allotment of land in favour of the respondent No.4-Trust is arbitrary and mala fide exercise of power by the State Government, is devoid of any merit and deserves to be rejected. Striking down any act for mala fide exercise of power is a judicial reserve

power exercised lethally, but rarely. The charge of mala fides against public bodies and authorities is more easily made than made out. It is the last refuge of a losing litigant. (See: AIR 1977 Supreme Court 448, Madurai Coats Ltd. vs. Their Workmen)

27. The land of Survey No.526 of Amreli Town was acquired in the year 1961 for the Seeds Development Center by following procedure prescribed under the Act. The Seeds Development Center had carried out its activity and office of Assistant Director, Agricultural, was constructed on the acquired land. As the Seeds Development Center did not require land for the said purpose, the Government had reclaimed the land and, thereafter, the respondent No.4-Trust on 23.7.1997 had applied for allotment of land for carrying out educational activities, which is public purpose. The said application was scrutinized by the Revenue Department on 12.12.1997 and as the demand of the respondent No.4-Trust was found for the public purpose, the Revenue Department had recommended to the district authorities to allot the said land to the Trust. After taking into consideration the situation of the land and the public purpose, for which the land was to be allotted, the Revenue Department had fixed the market price by drawing a panch-rozkam and had fixed the market price at Rs.74 per sq.mtr. Looking to the public purpose, for which the lands were to be allotted to the respondent No.4-Trust, the Government had decided to give 1500 sq.mtrs of land at the price of Rs.37 per sq.mtr, and the rest of the land at the rate of Rs.74/- per sq.mtr. The Government had also determined the market price after considering the sale instances of last five years. Allotment of land in favour of the respondent-Trust was considered in the Cabinet Meeting dated 24.12.1997 and the Cabinet had also approved the allotment of land and fixation of market price of the land. Looking to the public purpose, for which the land was to be allotted, valuation arrived at by the Town Planning Officer was not accepted. After the Cabinet had approved the allotment of land by its meeting held on 24.12.1997, the General Administration Department had addressed letter dated 26.12.1997 to the Revenue Department to this effect and the State Government on 31.12.1997 passed an order allotting the said land in favour of the respondent No.4-Trust and pursuant to the said order, the respondent No.4-Trust had deposited the full market price determined by the Government and the Mamlatdar, Amreli, handed over the possession of the land to the respondent No.4-Trust. In view of the background of these facts, and the public purpose for which the

lands were allotted in favour of the respondent No.4-Trust, we do not find any substance in the submission of the learned Senior Counsel for the petitioners that the State Government had acted mala fide and arbitrarily in allotting the land in favour of the respondent No.4-Trust. The averments made in the petition, in our opinion, do not establish that the action of the State Government of allotting the land to the respondent No.4-Trust is mala fide or arbitrary. As per the principles laid down in the decisions referred to above, the State Government can change the public purpose and can allot the land by changing the public purpose to the Trust who required the land for carrying out educational activities, which was the function of the State Government. Therefore, we do not find any substance in the submission of the learned Senior Counsel for the petitioners that the State Government had acted mala fide and arbitrarily in allotting the land in favour of the respondent No.4-Trust.

28. As a result of the foregoing reasons, we hold that the petitioners are not entitled to any reliefs prayed for in the Special Civil Applciation and, hence, the same is rejected. Rule is discharged with no order a to costs.

Special Civil Application No.2276 of 1998

29. This public interest litigation is filed by the petitioner, who is an elected member of the Lathi Taluka Panchayat, challenging the allotment of lands in favour of the respondent-Trust mainly on the ground that the lands in question were allotted to the respondent-Trust which was having large voters bank in Amreli District and to win over the said voters bank, decision to allot land in favour of the respondent-Trust was taken on the eve of the general elections which were to be held in the month of March 1998. The other ground challenging the said decision is that there was great loss to the State Exchequer as the land was sold at a meagre price of Rs.37/- per sq.mtr ignoring the valuation of the land determined by the Town Planning Officer, which was higher at the rate of Rs.190/- per sq.mtr.

30. We do not find any merit in the contentions raised by the petitioner. The market price fixed by the Government was arrived at after considering the sale deeds of last five years and looking to the public purpose for which the lands were to be allotted to the respondent-Trust. The land comprises of a large area and the entire area cannot be valued at one price or at a

flat rate. The Government had followed the required procedure of fixing market price of the acquired land. In the present case, the Government has fixed adequate amount as consideration and the price fixed is reasonable having regard to the relevant principles as regards fixing the market value of the land. Further, by allotting the land in favour of the respondent-Trust, the Government had discharged its statutory obligation of imparting educational activities as the respondent-Trust has undertaken to develop the said land for imparting educational activities, which was a great need of the area wherein the lands are situated. In fact, the Trust had invested a huge amount for price of the land. Imparting of education is a government function and the respondent-Trust by establishing various educational activities in the acquired land has shared the burden with the Government. The Government has right to allot the land even on a token amount when there is public purpose involved in the allotment of land to a particular institution. Looking to the public purpose involved in carrying out the educational activities by the respondent-Trust, the State Government through its Cabinet had taken a policy decision to allot the lands in favour of the respondent-Trust. The State Government had recovered sizeable amount from the respondent-Trust towards the price of the land. It cannot be said that the lands are sold to the respondent-Trust at a throw-away price and the State Exchequer has suffered financial loss. The educational activities for which the the lands were allotted to the respondent-Trust are for the benefit of the public at large and, therefore, it was not illegal or mala fide exercise of power by the respondents. In our opinion, the Court, in exercise of its powers under Article 226, would not sit in appeal over such policy decision and substitute its own decision.

31. As a result of foregoing discussion, we do not find any substance in this Special Civil Application. It is hereby rejected. Rule is discharged with no order as to costs.

Civil Application No. 1219 of 1998 in Special Civil Application No.9257 of 1997.

32. In view of the dismissal of Special Civil Application No.9257 of 1997, this application for modification of the order dated 30.12.1997 does not survive and it stands disposed of accordingly.

Civil Application No.4556 of 1998 in Special Civil Application No.2276 of 1998.

33. In view of the dismissal of Special Civil Application No.2276 of 1997, this application for ad-interim relief does not survive and it stands disposed of accordingly. Notice is discharged with no order as to costs.

34. After pronouncement of the judgment, the learned Senior Advocates, M/s. H.M. Mehta and N.D. Nanavati, have prayed that the status-quo on the lands in dispute, i.e. Survey No.526 of Amreli Town, may be maintained for a period of four weeks so as to enable the petitioners to approach the higher forum to challenge this judgment. The learned Senior Advocate for the respondent-Trust had earlier made statement before the court that the respondent-Trust will not carry out construction or raise any structure on the disputed land. The said position was continued from time to time pursuant to the order of this Court. Therefore, we direct that the status-quo with regard to the present situation over the disputed land shall be maintained by the respondent-Trust till November 30, 1998.

11.11.1998 (K.G.Balakrishanan, C.J.)

(M.H. Kadri, J.)

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(swamy)